

Interview with Examiner

Applicants thank the Examiner for the courtesy extended toward their representative Mr. James Hellwege during the interview of August 13, 2001. During the interview, agreement was reached with regard to the amendment of claim 28 to recite treatment of oxidative damage “to the skin” in relation to the outstanding rejections under 35 USC 101 and 112 as discussed below.

Rejections under 35 USC 101 and 112 (first paragraph)

Claims 28-51 stand rejected under 35 USC 101 and 112 (first paragraph). These rejections are respectfully traversed to the extent deemed to apply to the claims as amended.

In response, applicants amend claim 28 to recite prophylaxis or treatment of oxidative damage “to the skin”. During the interview, the undersigned reminded the Examiner that the remaining independent claims are similarly limited to “skin treatment”. As all pending claims are now so limited, applicants believe that the outstanding rejections under 35 USC 101 and 112 (first paragraph) are without basis and should be withdrawn. Agreement was reached with the Examiner during the interview on this point.

Request for Interference

As previously requested in applicants' paper dated September 18, 1998, applicants request that an interference be declared between the instant application and U.S. Patent No. 5,679,691 (Ribier et al) which was granted on October 21, 1997.

Again, as previously proposed, applicants propose the following count for the interference:

Count 1: A method for the prophylaxis or treatment of a patient suffering from a dysfunction or disease condition arising from oxidative damage to the skin comprising topically administering to the patient in need thereof an effective oxidative damage-treating amount of a spin trapping compound in a pharmaceutically acceptable carrier for topical administration to said patient.

At least claims 1, 2, 3, 4, 5, 12 and 13 of U.S. Patent No. 5,679,691 correspond to the proposed count.

Claims 28, 29 and 32-51 of the instant application correspond to the proposed count.

Pursuant to 37 CFR 1.607(a)(6), applicants have satisfied the requirements of 35 USC 135(b). Claims 28-51 were originally presented by preliminary amendment dated February 27, 1998, within one year of the October 21, 1997 issue date of U.S. Patent No. 5,679,691. Amended claim 28 in essence corresponds to cancelled claim 31, which claim was presented in the preliminary amendment. The subject matter of amended claim 28 was thus presented within one year of the issue date of U.S. Patent No. 5,679,691.

Applicants also again inform the Examiner that the asserted effective date of the claimed invention corresponding to the count is June 18, 1991, which antedates both the earliest U.S. filing date of December 30, 1994 claimed by U.S. Patent No. 5,679,691, as well as the French priority date of December 30, 1993. Applicants intend to demonstrate priority of invention as to the subject matter of the proposed count.

The instant application claims benefit of priority of the following applications for which support resides for the presently-claimed invention:

- (1) Application No. 08/167,900, filed July 29, 1994;
- (2) Application No. 08/212,800, filed March 15, 1994;
- (3) Application No. 08/52,870, filed April 23, 1993; and
- (4) Application No. 07/716,952, filed June 18, 1991.

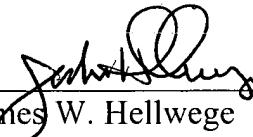
Support for the class of compounds defined by the claims resides at pages 8-15 of the specification. Support for the topical application of the active agent to the skin resides at pages 29, 31 and 35, as well as original claim 5. Support for the use of an ointment or cream topical carrier resides at page 32 as well as original claim 14. Support for the recited dosage amounts resides at page 33. Support for the treatment of radiation or cytotoxic compound exposure resides at pages 7, 20 and 21, as well as original claim 11.

In view of the above, the application is now believed to be in condition for allowance and an early indication of same is earnestly solicited.

In the event that any outstanding matters remain in this application, Applicants request that the Examiner contact James W. Hellwege (Reg. No. 28,808) at (703) 205-8000 to discuss such matters.

Very truly yours,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
James W. Hellwege
Reg. No. 28,808
P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

CLAIM AMENDMENTS WITH MARKINGS TO SHOW CHANGES

Claims 30 and 31 are cancelled without prejudice or disclaimer of the subject matter therein.

The claims are amended as follows:

28. (Amended) A method for the prophylaxis or treatment of a patient suffering from a dysfunction or disease condition arising from oxidative damage to the skin comprising topically administering to the patient in need thereof an effective oxidative damage-treating amount of a spin trapping compound in a pharmaceutically acceptable carrier for topical administration.

35. (Amended) The method of any one of claims 28, 29, [30, 31], 32, 33 or 34 wherein the carrier for topical administration is an ointment or cream base.